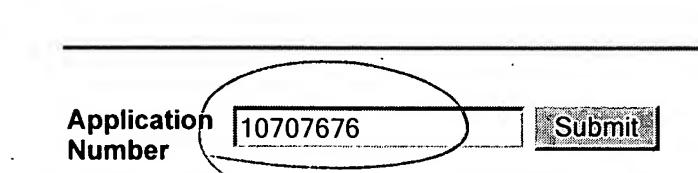
ERROR: This Application cannot be modified as it is just a historical data

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IDS Flag Clearance for Application 10707676

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Lilling, Herbert J.

From: Doll, Jo

Sent: Thursday, August 09, 2007 5:57 PM

Patents_all_Employees

Subject:

Announcement of Notice of Proposed Rulemaking - Alternative Claims

Hello everybody !!!

Because of the critical role you play as patent examiners in fostering innovation and competitiveness across all technologies, I wanted to share with you a new rules proposal that is expected to be published in the Federal Register tomorrow (Friday, August 10, 2007).

ability to focus the examination process for claims that contain more than one independent The proposed new rules could impact patent applications in all art areas, but will likely have the greatest impact on biotechnology, chemical, and pharmaceutical technologies. The rules will improve an examiner's and distinct invention.

costly commercial databases. In an effort to level the playing field for all and provide a more efficient, thorough and quality examination, the Office is proposing The search and examination of alternative (Markush) claims, especially in TC 1600 and TC 1700, can consume a disproportionate amount of Office resources claim are very expensive to search because they require a chemical structure search using examination of each alternative may be required to fully address the entire scope of these claims that include alternatives to maintain a certain degree of relatedness among them rule changes that will require those applicants who choose to draft compared to other types of claims because a separate search and claims. For example, the chemical structures typical of a Markush

Brief Summary of Proposed Rule Changes:

- 1. A claim must be limited to a single invention.
- ity of invention among the alternatives using the Harnisch Test: All the species must share Intra-claim restriction would be permissible when there is no uni substantial feature essential for a common utility,
- Any claim that recites both an elected and a non-elected invention in the alternative will be objected to. რ
- Any non-elected invention must be canceled before the claim will be allowed, subject to reconsideration and review.
- applications (CIP, provisional, and foreign applications). Applicants must identify which claims are disclosed in prior-filed 4
- reference, unless there is no other practical way to define the invention. A claim may not incorporate another part of the specification by 5.
- reference, and that portion sets forth alternatives, the claim will be treated as an alternative If a claim incorporates another part of the specification by
- 6. A claim using alternative language must be in the proper format:
- Each alternative must be substitutable one for another.
- No alternative is encompassed by any other alternative, unless there is no other practical way to claim
 - No alternative is defined as a set of further alternatives within the claim.
- The number and presentation of alternatives in the claim must not make the claim difficult to construe.

proposed rule changes. The proposed rules were guided by TC 1600 Group Director John LeGuyader, who worked diligently with managers, examiners and legal staff from various business units, as well as a POPA representative. sessions and provided suggestions for these proposed rules and worked on drafting the I would like to thank those persons who participated in earlier focus

The team was:

Team Lead: John LeGuyader Solicitor's Office: Steve Walsh and Janet Gongola DCPEP: Linda Therkorn, Bob Bahr, Brian Hearn, Kathleen Fonda and Karen Hastings TC1600: Julie Burke and Jeanine Goldberg

TC1700: Larry Tarazano OIR: James Housel

POPA: Adrienne Johnston

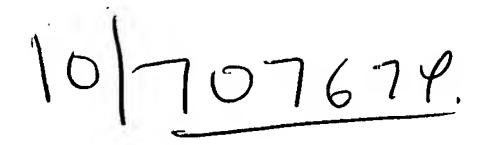
October 9, 2007, and then finalize rule changes to address these alternative or Markush-We would also value any comments, questions, and suggestions you may have on the The Office will collect and consider comments from the public until type claims based on an assessment of the comments received. proposed new rules. Please send your feedback to:

Keep up the great work!!!

<mailto:Alternative Claim NPR Markush@uspto.gov>.

John Doll

Commissioner for Patents



ATCC

AMENDED 6/29/05

16801 University Bivd . Manassas, VA 20110-2209 . Telephone: 703-365-2700 . FAX: 703-365-2745

BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.

To: (Name and Address of Depositor or Attorney)

Nutrition Physiology Corporation Attn: Matthew R. Garner 1105 Hanshaw Road Ithaca, NY 14850

Deposited on Behalf of: Nutrition Physiology Corporation

Identification Reference by Depositor:

Patent Deposit Designation

PTA-6748
PTA-6749
PTA-6750
PΓA-6751
PTA-6752

The deposits were accompanied by: __ a scientific description a proposed taxonomic description indicated above. The deposits were received May 26, 2005 by this International Depository Authority and have been accepted.

AT YOUR REQUEST: X

We will inform you of requests for the strains for 30 years.

The strains will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strains, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strains.

If the cultures should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with living cultures of the same.

The strains will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the cultures cited above was tested June 6, 2005. On that date, the cultures were viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:

Marie Harris, Patent Specialist, ATCC Patent Depository

Date: June 21, 2005

cc: Greg Novak

Docket or Case No: 52330004CNSU04; -DVUS06; -DVUS07; -DVUS08

BT44

10/707674

ATCC

1830) Caberrity Bivd - Manascos, VA 20110-2209 - Telephone 703-265-2700 - FAX: 203-265-2745

BUDAPEST TREATY ON THE EVIERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE.

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.

To: (Name and Address of Depositor or Attorney)

Nutrition Physiology Corporation Afte: Matthew R. Gamer 1105 Harshaw Rd Ithoca, NY 14850

Deposited on Behalf of: Nutrition Physiology Corporation

litentmention Reference by Depositor:

Putcat Deposit Designation

Lactobacillus acidophilus: TA11 Propinsibacterium jensemii: P9 Propinsibacterium acidipropionici: P42

PTA-6820 PTA-6821 PTA-6822

The deposits were accompanied by: a scientific description a proposed taxonomic description indicated above. The deposits were received June 30, 2005 by this international Depository Anthonity and have been accepted.

AT YOUR REQUEST: X

We will inform you of requires for the strains for 10 years.

The strains will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Putcut is issued citing the strains, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strains.

If the cultures should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with fiving cultures of the same.

The strains will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Badupest Treaty.

The viability of the cultures cited above was tented July 5, 2005. On that date, the cultures were viable.

International Depository Authority: American Type Culture Collection, Munuseas, VA 20110-2209 USA.

Nigmiture of person noving authority to represent ATCC:

Marie Harris, Patent Specialist, ATCC Patent Depository

Dater September 19, 2005

cc: Oreg Novak

Docket or Case No: 52330004CNTE804; -DVUS06; -DVTISO7, -DVUS08

10/707674

ATCC

10801 University Blvd . Manassas, VA 20110-2209 . Telephone: 703-365-2700 . PAX: 703-365-2745

BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.

To: (Name and Address of Depositor or Attorney)

Cornell University
Atin: Matthew R. Gamer, Ph.D.
Department of Food Science
Stocking Hall
Ithaca, NY 14853

Deposited on Behalf of: Nutrition Physiology Corporation

Identification Reference by Depositor:

Patent Deposit Designation

Lactococcus lactis: L7
Pediococcus acidilactici: D3

PTA-7425 PTA-7426

The deposits were accompanied by: \underline{X} a scientific description a proposed taxonomic description indicated above. The deposits were received March 8, 2006 by this International Depository Authority and have been accepted.

AT YOUR REQUEST: X

We will inform you of requests for the strains for 30 years.

The strains will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strains, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strains.

If the cultures should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with living cultures of the same.

The strains will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the cultures cited above was tested March 14, 2006. On that date, the cultures were viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:

Tanya Numally, Patent Specialist, ATCC Patent Depository

Date: March 28, 2006

cc: Tracy Druce

(Ref.: Docket or Case No. 5233.0009.NPUS01)

Attorney Dkt. No. 5233.009.NPUS01

Serial No: 10/707,674

REMARKS

All comments and remarks of record are herein incorporated by reference. Applicants respectfully traverse these rejections and all comments made in the Office Action. Nevertheless, in an effort to expedite prosecution, Applicants provide the following remarks regarding the cited references.

DISPOSITION OF CLAIMS

Claims 1-14, and 16-28 are pending in the application. Claims 1, 12, 16 and 26 have been amended for clarification. No new matter has been added.

TELEPHONE INTERVIEW

Applicants respectfully thank the Examiner for granting a telephone interview on August 16, 2007. With this reply, the Applicants adopt the Examiner's suggested amendments to claims 1, 12, 16, and 26. Furthermore, in line with the Examiner's suggestion, Applicants provide a statement herewith regarding biological material.

BIOLOGICAL MATERIAL

Applicants respectfully assert that the Applicants have made deposits of the above mentioned microorganisms with a depository under the Budapest Treaty and which satisfy the regulations 37 CFR §§1.801-1.809, including in 37 CFR §1.803(a)(1) which states that a deposit shall be recognized for the purposes of these regulation if made in any international depositary authority (IDA) as established under the Budapest Treaty. Applicants have provided three forms indicating deposits made with the ATCC on May 26, 2005, June 30, 2005, and March 8, 2006 as evidence of such deposits.

Applicants further state that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent.

In view of the amendments and foregoing remarks, Applicants respectfully assert that the claims are in allowable condition.

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